IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5567 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH HANUMANSING TOMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. D.R. Kachhavah for the petitioner and learned A.G.P. Mr. K.T.Dave, on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 7-5-1999 passed by the Commissioner of Police, Ahmedabad City (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the detenu under Section 9(1) of " PASA", copy of which is produced at running page 16 inter alia indicate that four Prohibition cased were registered against the petitioner-detenu at Nashabandi Police Station West in between 5-2-1999 to 3-3-1999. That in each case countrymade liquor has been seized from the possession of the petitioner and all the matters are pending investigation.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements dated 5-5-1999 and 6-5-1999 against the petitioner-detenu with regard to bootlegging activities of the petitioner-detenu and have narrated in respect to alleged incidents dated 15-4-1999 and 20-4--1999.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order suffers from the vice of non application of mind. That as observed in the grounds of detention, the petitioner was not arrested in respect to CR no.84/99 registered on 9-2-1999. However, the detaining authority has observed that by passage of time he would be arrested, produced before the Court and after getting himself released on bail, he is likely to continue his antisocial activity of bootlegging , and as such, detention order under "PASA" is necessary.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C.

amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case, the observations made by the detaining authority suggests non application of mind on the part of the detaining authority. The petitioner could have been kept in custody by opposing bail application if at all moved in the proceedings of CR no.84/99 and even if it was granted, cancellation could have been claimed under Section 437 (5) of the Criminal Procedure Code, and as such, it is difficult to uphold the impugned order.

8. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 7-5-1999 passed by the Commissioner of Police, Ahmedabad City (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Dinesh Hanumansing Tomar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

****

stanley-akt